



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2023-0104; FRL10907-02-R3]

Air Plan Approval; Virginia; Startup, Shutdown, and Malfunction Amendments to Facility and Control Equipment Maintenance or Malfunction Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The revision pertains to several state regulatory changes affecting startup, shutdown and malfunction. This SIP revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for provisions in the Virginia SIP. EPA is approving these revisions to the Virginia SIP and determining that the SIP revision corrects the deficiencies in the Virginia SIP identified in the June 12, 2015 SIP call. This action is being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2023-0104. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5511. Mr. Silverman can also be reached via electronic mail at silverman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 2023 (88 FR 24377), EPA proposed to approve a SIP revision submitted by the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) on August 1, 2016. In that proposal we proposed to determine that the SIP revision corrects the deficiencies with respect to Virginia’s SIP that were identified in the June 12, 2015 action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” (2015 SSM SIP Action). 80 FR 33840 (June 12, 2015). The reasons for our proposed approval and determination are stated in the proposal for this action and will not be restated here. 88 FR 24377 (April 20, 2023). The public comment period for our proposed approval and determination ended on May 22, 2023. Two comments were received and are described below in section III of this preamble.

II. Summary of Virginia’s SIP Revision Related to this Action

With respect to the Virginia SIP, in the 2015 SSM SIP Action, EPA determined that one provision, 9 Virginia Administrative Code (VAC) 5-20-180(G), was substantially inadequate to meet CAA requirements.¹ In the August 1, 2016 SIP revision, Virginia amended the portion of 9VAC5-20-180(G)² to address the deficiencies in the 2015 SSM SIP Action, and made several

¹ See 80 FR 33840 at 33961 (June 12, 2015).

² This document will hereafter use the abbreviated form of 9 Virginia Administrative Code (VAC) § 5-20-180(G), which is 9VAC5-20-180(G) or 9 Va. Admin Code. 5-20-180(G).

other administrative amendments in 9VAC5-20-180 and other sections.³ In this action, EPA is determining Virginia's August 1, 2016 SIP revision addressed the provision identified as substantially inadequate in the 2015 SSM SIP Action. Additionally, EPA has identified a typographical error previously incorporated by reference in the Code of Federal Regulations (CFR) for one of the provisions being updated in this notice. This final rule contains the text to correct this error in the amendments to 40 CFR part 52 set forth below.

Other specific requirements of Virginia's August 1, 2016 submittal and the rationale for EPA's proposed action are explained in the notice of proposed rulemaking (NPRM) and will not be restated here.

III. EPA's Response to Comments Received

EPA received two sets of comments in response to the NPRM that are available in the docket for this action. Of these two sets of comments, one was outside of the scope of this rulemaking. The other comment, submitted by the Sierra Club, was supportive. As such, neither of these comments require a response by EPA.

IV. Final Action

EPA is approving Virginia's August 1, 2016 SIP revision as a revision to the Virginia SIP. EPA has determined that the amendments in the August 1, 2016 SIP revision correct the deficiencies identified in the 2015 SSM SIP Action.

V. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for

³ Administrative changes to other sections consist of references to 9VAC5-20-180 added to 9VAC5-40-8416, 9VAC5-40-8470, 9VAC5-40-8640, 9VAC5-40-8790 and 9VAC5-40-8940 to state "The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply."

violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts...." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998, opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be

afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Virginia’s Revised 9VAC5–20–180 (Pertaining to Facility Control Equipment and Malfunction) which regulates periods of excess emissions from the shutdown or bypassing of emissions control equipment for maintenance, and malfunction of emissions control equipment or sources at affected facilities, including 9VAC5–40-8416 (Letterpress Printing Operations), 9VAC5–40-8470 (Offset Lithographic Printing Operations), 9VAC5–40-8640 (Industrial Solvent Cleaning Operations), 9VAC5–40-8790 (Miscellaneous Industrial Adhesive Application Processes), and 9VAC5–40-8940 (Miscellaneous Metal Parts and Products Coating Application Systems) in section 52.2420, which corrects the deficiency in the Virginia SIP, as set forth below in the amendments to 40 CFR part 52. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by EPA for

inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

VII. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L.104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

⁴ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The VADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action,

and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which corrects the deficiencies in Virginia’s SIP identified in the 2015 SSM SIP Action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by:

- a. Revising the entry “5-20-180”;
- b. Adding the entry “5-40-8416” in numerical order under the heading “Article 56, Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56)”;
- c. Adding the entry “5-40-8470” in numerical order under the heading “Article 56.1. Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56.1)”;
- d. Adding the entry “8-40-8640” in numerical order under the heading “Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-57)”;
- e. Adding the entry “5-40-8790” in numerical order under the heading “Article 58. Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)”;
- f. Removing the subject heading “Article 59. Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic

Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)” and adding the subject heading “Article 59. Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-59)” in its place; and

g. Adding the entry “5-40-8940” in numerical order under the new heading “Article 59. Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-59)”.

The revision and additions read as follows:

§ 52.2420 Identification of plan.

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(c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *			
9 VAC 5, Chapter 20 General Provisions				
* * *	* * *			
Part II Air Quality Programs				
* * *	* * *			
5-20-180	Facility and control equipment maintenance or malfunction	6/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Revised 9VAC5-20-180(A) through 9VAC5-20-180(D) and 9VAC5-20-180(F) through 9VAC5-20-180(J).
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9 VAC 5, Chapter 40 Existing Stationary Sources [Part IV]				
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Part II Emission Standards				
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State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Article 56. Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard (Rule 4-56)				
* * * * *				
5-40-8416	Facility and control equipment maintenance or malfunction.	2/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Added.
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Article 56.1. Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56.1)				
* * * * *				
5-40-8470	Facility and control equipment maintenance or malfunction.	2/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Added.
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Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-57)				
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8-40-8640	Facility and control equipment maintenance or malfunction.	2/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Added.
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State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Article 58. Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)				
* * * * *				
5-40-8790	Facility and control equipment maintenance or malfunction.	2/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Added.
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Article 59. Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-59)				
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5-40-8940	Facility and control equipment maintenance or malfunction.	2/1/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Added.
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[FR Doc. 2023-13147 Filed: 6/21/2023 8:45 am; Publication Date: 6/22/2023]